

1 KAMALA D. HARRIS
Attorney General of California
2 LINDA K. SCHNEIDER
Supervising Deputy Attorney General
3 State Bar No. 101336
AMANDA DODDS
4 Senior Legal Analyst
110 West "A" Street, Suite 1100
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 645-2141
7 Facsimile: (619) 645-2061
Attorneys for Complainant
8

9 **BEFORE THE**
BOARD OF REGISTERED NURSING
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. *2013 - 359*

13 **LINDA KAY OCONNELL**
3103 Cassia Avenue, Apt. B
14 Costa Mesa, CA 92626

A C C U S A T I O N

15 **Registered Nurse License No. 410846**

16 Respondent.

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18 Complainant alleges:

19 **PARTIES**

20 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her
21 official capacity as the Executive Officer of the Board of Registered Nursing, Department of
22 Consumer Affairs.

23 2. On or about March 31, 1987, the Board of Registered Nursing issued Registered
24 Nurse License Number 410846 to Linda Kay Oconnell (Respondent). The Registered Nurse
25 License expired on July 31, 2012, and has not been renewed.

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JURISDICTION

3. This Accusation is brought before the Board of Registered Nursing (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 2750 of the Code provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

5. Section 2764 of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under section 2811, subdivision (b) of the Code, the Board may renew an expired license at any time within eight years after the expiration.

STATUTORY PROVISIONS

6. Section 482 of the Code states:

Each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when:

(a) Considering the denial of a license by the board under Section 480; or

(b) Considering suspension or revocation of a license under Section 490.

Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee.

7. Section 490 of the Code provides, in pertinent part, that a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

8. Section 493 of the Code states:

Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board

1 may inquire into the circumstances surrounding the commission of the crime in order
2 to fix the degree of discipline or to determine if the conviction is substantially related
to the qualifications, functions, and duties of the licensee in question.

3 As used in this section, "license" includes "certificate," "permit," "authority,"
4 and "registration."

5 9. Section 2761 of the Code states:

6 The board may take disciplinary action against a certified or licensed nurse or
7 deny an application for a certificate or license for any of the following:

8 (a) Unprofessional conduct, which includes, but is not limited to, the
following:

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10 (f) Conviction of a felony or of any offense substantially related to the
11 qualifications, functions, and duties of a registered nurse, in which event the record of
the conviction shall be conclusive evidence thereof.

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13 10. Section 2762 of the Code states:

14 In addition to other acts constituting unprofessional conduct within the meaning
15 of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person
licensed under this chapter to do any of the following:

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17 (b) Use any controlled substance as defined in Division 10 (commencing with
18 Section 11000) of the Health and Safety Code, or any dangerous drug or dangerous
device as defined in Section 4022, or alcoholic beverages, to an extent or in a manner
19 dangerous or injurious to himself or herself, any other person, or the public or to the
extent that such use impairs his or her ability to conduct with safety to the public the
20 practice authorized by his or her license.

21 (c) Be convicted of a criminal offense involving the prescription, consumption,
or self-administration of any of the substances described in subdivisions (a) and (b) of
22 this section, or the possession of, or falsification of a record pertaining to, the
substances described in subdivision (a) of this section, in which event the record of
23 the conviction is conclusive evidence thereof.

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25 11. Section 2765 of the Code states:

26 A plea or verdict of guilty or a conviction following a plea of nolo contendere
27 made to a charge substantially related to the qualifications, functions and duties of a
registered nurse is deemed to be a conviction within the meaning of this article. The
28 board may order the license or certificate suspended or revoked, or may decline to
issue a license or certificate, when the time for appeal has elapsed, or the judgment of

conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code allowing such person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information or indictment.

REGULATORY PROVISIONS

12. California Code of Regulations, title 16, section 1444, states:

A conviction or act shall be considered to be substantially related to the qualifications, functions or duties of a registered nurse if to a substantial degree it evidences the present or potential unfitness of a registered nurse to practice in a manner consistent with the public health, safety, or welfare. Such convictions or acts shall include but not be limited to the following:

(a) Assaultive or abusive conduct including, but not limited to, those violations listed in subdivision (d) of Penal Code Section 11160.

(b) Failure to comply with any mandatory reporting requirements.

(c) Theft, dishonesty, fraud, or deceit.

(d) Any conviction or act subject to an order of registration pursuant to Section 290 of the Penal Code.

13. California Code of Regulations, title 16, section 1445 states:

....

(b) When considering the suspension or revocation of a license on the grounds that a registered nurse has been convicted of a crime, the board, in evaluating the rehabilitation of such person and his/her eligibility for a license will consider the following criteria:

(1) Nature and severity of the act(s) or offense(s).

(2) Total criminal record.

(3) The time that has elapsed since commission of the act(s) or offense(s).

(4) Whether the licensee has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.

(5) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code.

(6) Evidence, if any, of rehabilitation submitted by the licensee.

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1 COSTS

2 14. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
3 administrative law judge to direct a licensee found to have committed a violation or violations of
4 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
5 enforcement of the case.

6 **FIRST CAUSE FOR DISCIPLINE**

7 **(April 30, 2010 Criminal Conviction for DUI on January 31, 2010)**

8 15. Respondent has subjected her license to disciplinary action under sections 490 and
9 2761, subdivision (f) of the Code in that Respondent was convicted of a crime that is substantially
10 related to the qualifications, functions, and duties of a registered nurse. The circumstances are as
11 follows:

12 a. On or about April 30, 2010, in a criminal proceeding entitled *People of the*
13 *State of California v. Linda Kay Oconnell*, in Orange County Superior Court, case number
14 10HM01551, Respondent was convicted on her plea of guilty of violating Vehicle Code section
15 23152, subdivision (a), driving under the influence of alcohol, a misdemeanor. An additional
16 count of violating Vehicle Code section 23152, subdivision (b), driving with a blood alcohol
17 concentration (BAC) of .08 or higher, was dismissed pursuant to a plea agreement.

18 b. As a result of the conviction, on or about April 30, 2010, Respondent was
19 granted three years informal probation, and ordered to complete a three-month Level I First
20 Offender Alcohol Program and 49 hours of community service, pay \$787 in fees, fines, and
21 restitution, and comply with the terms of standard DUI probation. On May 5, 2010, Respondent's
22 probation was revoked, and subsequently reinstated, for failure to enroll in the alcohol program.
23 On December 22, 2010, Respondent's probation was revoked for failure to complete all
24 community service hours. At a hearing on January 3, 2011, Respondent was sentenced to serve
25 four days in the Orange County Jail, with credit for four days. On May 4, 2011, Respondent's
26 probation was revoked, and subsequently reinstated, for failure to complete the alcohol program.
27 On February 23, 2012, Respondent's probation was revoked, and she was sentenced to serve 60

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1 days in the Orange County Jail, with credit for 18 days, to be served concurrently with case
2 number 12HM02667 (paragraph 17, below).

3 c. The facts that led to the conviction are that on or about the early morning of
4 January 31, 2010, patrol officers with the Newport Beach Police Department observed a vehicle,
5 driven by Respondent, traveling at approximately five miles per hour. Respondent's vehicle
6 swerved into an adjacent lane and nearly collided with the raised center median. The officers
7 conducted a traffic stop. Upon contact with Respondent, they immediately observed a strong
8 odor of an alcoholic beverage emanating from the vehicle. Respondent admitted she had
9 consumed two shots of vodka. Respondent was asked to exit her vehicle; she was unsteady on
10 her feet. The officer observed that Respondent had red, watery eyes, slurred speech, a strong
11 odor of alcohol on her breath and person, and she had a difficult time remaining focused on the
12 officer's questions. As the officer explained and demonstrated a field sobriety test, Respondent
13 ran to the front of her vehicle and into the number two lane of traffic. After Respondent was
14 caught and escorted back to the sidewalk, the officer attempted to resume the field sobriety tests.
15 Respondent complained that she had to use a bathroom; the officer told her there was no toilet
16 facilities available. Respondent became irate and started yelling profanities at the officers, then
17 she urinated on herself. Respondent refused to finish the field sobriety tests. Respondent
18 provided two breath samples that tested with a BAC of .12 and .13 percent, respectively.
19 Respondent removed her pants and demanded a pair of pants in her vehicle. Respondent was
20 transported to jail. She opted to provide a blood sample for the forensic nurse, then changed her
21 mind, then changed her mind again and gave the sample. During booking, Respondent dropped
22 to the floor complaining of severe back pain and demanded an ambulance respond to the jail.
23 Respondent became combative with the officers and she was put in restraints. Once at the
24 hospital, Respondent became verbally assaultive towards hospital staff and refused to allow them
25 to examine her to determine the source of her back pain. Respondent was deemed incompetent,
26 and she was injected with two doses of a sedative in order to calm her to the point where they
27 could conduct an examination. Respondent was admitted into the hospital and later released.

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SECOND CAUSE FOR DISCIPLINE

(September 20, 2011 Criminal Conviction for Public Intoxication on March 5, 2011)

16. Respondent has subjected her license to disciplinary action under sections 490 and 2761, subdivision (f) of the Code in that Respondent was convicted of a crime that is substantially related to the qualifications, functions, and duties of a registered nurse. The circumstances are as follows:

a. On or about September 20, 2011, in a criminal proceeding entitled *People of the State of California v. Linda Kay Oconnell, aka Linda Kay Kay Oconnell, aka Linda Kay Oconnoll*, in Orange County Superior Court, case number 11CM05893, Respondent was convicted on her plea of guilty of violating Penal Code section 647, subdivision (f), public intoxication, a misdemeanor, as well as Penal Code section 602.1, subdivision (a) interference with a business. An additional count of battery (Pen. Code, § 242) was dismissed pursuant to a plea agreement.

b. As a result of the conviction, on or about September 20, 2011, Respondent was granted three years informal probation, and ordered to serve 20 days in the Orange County Jail, with credit for two days. Respondent was permitted to complete 18 days of community service in lieu of jail. Respondent was further ordered to pay fees, fines, and restitution, and to stay away from the Bristol Swap Mall.

c. The facts that led to the conviction are that on or about the evening of March 5, 2011, officers with the Santa Ana Police Department were dispatched to a trespassing report at a local mall. Upon arrival, the officers met with a security guard who was detaining Respondent for trespassing and assault. The security guard told the officers that Respondent arrived at the mall and began fighting with other customers. Respondent was asked to leave the business, but she refused. When the security guard attempted to escort Respondent from the premises, she became irate and kicked the security guard several times. The officers made contact with Respondent who was handcuffed and sitting on the floor. Respondent's eyes were bloodshot and her speech was slurred. Respondent was yelling obscenities at the security guard. Respondent was arrested for public intoxication. Respondent was unable to walk unassisted to the patrol car.

1 **THIRD CAUSE FOR DISCIPLINE**

2 **(February 23, 2012 Criminal Conviction for DUI with Prior on February 15, 2012)**

3 17. Respondent has subjected her license to disciplinary action under sections 490 and
4 2761, subdivision (f) of the Code in that Respondent was convicted of a crime that is substantially
5 related to the qualifications, functions, and duties of a registered nurse. The circumstances are as
6 follows:

7 a. On or about February 23, 2012, in a criminal proceeding entitled *People of the*
8 *State of California v. Linda Kay Oconnell, aka Linda Kay Kay Oconnell, aka Linda Kay Oconnoll*
9 in Orange County Superior Court, case number 12HM02667, Respondent was convicted on her
10 plea of guilty of violating Vehicle Code section 23152, subdivision (a), driving under the
11 influence of alcohol, a misdemeanor. The court found true the special allegation that Respondent
12 was previously convicted of the same offense within 10 years pursuant to Vehicle Code section
13 23540, as described in paragraph 15, above.

14 b. As a result of the conviction, on or about February 23, 2012, Respondent was
15 granted five years informal probation, and sentenced to serve 60 days in the Orange County Jail,
16 with credit for 18 days. Respondent was further ordered to complete an 18-month Multiple
17 Offender Alcohol Program, and pay fees, fines, and restitution.

18 c. The facts that led to the conviction are that on or about the afternoon of
19 February 15, 2012, a patrol officer with the Costa Mesa Police Department was dispatched to
20 investigate a disturbance. Upon arrival, the officer was contacted by the reporting party who
21 stated that Respondent walked into her business and started cursing at people. The reporting
22 party stated that Respondent left her business, got into her vehicle, and drove to the end of the
23 parking lot. Respondent was observed sitting in her vehicle. The officer contacted Respondent
24 who was sitting in the driver's seat of her vehicle. As the officer spoke to Respondent, he noted a
25 strong odor of an alcoholic beverage emitting from her breath and person. Respondent's face was
26 flush, and her eyes were bloodshot and watery. Respondent spoke with a slight slur. Respondent
27 admitted drinking one 32 ounce can of beer. Respondent submitted to a series of field sobriety

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1 tests which she was not able to complete as explained and demonstrated by the officer.

2 Respondent was arrested for driving under the influence of alcohol.

3 **FOURTH CAUSE FOR DISCIPLINE**

4 **(Use of Alcohol in a Dangerous Manner)**

5 18. Respondent has subjected her registered nurse license to disciplinary action under
6 section 2762, subdivision (b) of the Code for unprofessional conduct in that on or about January
7 31, 2010, March 5, 2011, and February 15, 2012, as described in paragraphs 15-17, above,
8 Respondent used alcoholic beverages to an extent or in a manner that was potentially dangerous
9 and injurious to herself, and to others.

10 **FIFTH CAUSE FOR DISCIPLINE**

11 **(Conviction of Alcohol-Related Criminal Offenses)**

12 19. Respondent has subjected her registered nurse license to disciplinary action under
13 section 2762, subdivision (c) of the Code for unprofessional conduct in that on or about April 30,
14 2010, September 20, 2011, and February 23, 2012, as described in paragraphs 15-17, above,
15 Respondent was convicted of a criminal offenses involving the consumption and/or self-
16 administration of alcohol.

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1 **PRAYER**


2 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
3 and that following the hearing, the Board of Registered Nursing issue a decision:

4 1. Revoking or suspending Registered Nurse License Number 410846, issued to Linda
5 Kay Oconnell;

6 2. Ordering Linda Kay Oconnell to pay the Board of Registered Nursing the reasonable
7 costs of the investigation and enforcement of this case, pursuant to Business and Professions
8 Code section 125.3;

9 3. Taking such other and further action as deemed necessary and proper.
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12 DATED: November 2, 2012

for 

LOUISE R. BAILEY, M.ED., RN
Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

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